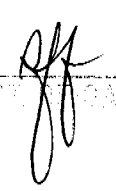


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

FILED
U.S. DIST. COURT
STATESBORO DIV.

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SO. DIST. GA.

ROYLAND KICKLIGHTER,)
)
 Movant,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

Case No. CV607-043
[Underlying CR605-034]

REPORT AND RECOMMENDATION

Movant has filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his federal prison sentence. Doc. 1. The government has filed a motion to dismiss the instant motion as untimely. Doc. 3. Because the motion is barred by the statute of limitations applicable to § 2255 motions, the Court recommends that the government's motion be GRANTED and the instant motion be DISMISSED.

I. BACKGROUND

Movant pleaded guilty to distributing approximately one ounce of methamphetamine in violation of 21 U.S.C. § 841(a)(1). CR605-034, doc. 26. On April 25, 2006, the Court sentenced movant to 180 months'

imprisonment, three years' supervised release, and a \$100.00 special assessment. Id. at doc. 31. Movant did not file an appeal. He executed the instant motion on July 9, 2007. Doc. 1.

II. ANALYSIS

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) amended § 2255 to require a movant to file a § 2255 motion within one year of the date movant's conviction becomes final. 28 U.S.C. § 2255 ¶ 6. Movant was sentenced on April 25, 2006, and because he did not file an appeal, his conviction became final ten days after the Court entered judgment following sentencing. Mederos v. United States, 218 F.3d 1252, 1253 (11th Cir. 2003). Therefore, pursuant to § 2255 ¶ 6(1), movant's conviction became final on May 5, 2006, when the time for filing a notice of appeal expired. See Fed. R. App. P. 4(b)(1)(A)(i) (establishing ten-day period). The one-year statute of limitations began running at that time, and the last day for movant to file a timely § 2255 motion was May 7, 2007.¹ Movant executed the instant motion on July 9, 2007, some two months beyond the expiration

¹ Movant had until Monday, May 7, 2007 to file his §2255 motion, as the 365th day fell on Saturday.

of the one-year limitations period. The instant motion is therefore untimely, as it was filed more than one year after movant's conviction became final.

III. CONCLUSION

Based on the foregoing, movant's motion seeking relief pursuant to § 2255 is untimely. Movant presents no newly discovered evidence or rule of law to excuse his untimely filing. Accordingly, the government's motion to dismiss should be GRANTED and the instant motion should be DISMISSED.

**SO REPORTED AND RECOMMENDED this 17th day of
September, 2007.**


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

ROYLAND KICKLIGHTER,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. CV607-043
[Underlying CR605-034]

ORDER

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation, to which objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

SO ORDERED this _____ day of _____, 2007.

**B. AVANT EDENFIELD
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

ROYLAND KICKLIGHTER,

Movant,

v.

UNITED STATES OF AMERICA,

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Case No. CV607-043
[Underlying CR605-034]

ORDER

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

SO ORDERED this ____ day of _____, 2007.

**B. AVANT EDENFIELD
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA**